

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY TABAREZ,

Plaintiff,

No. CIV S-04-0360 LKK EFB P

vs.

DIANA BUTLER, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On February 28, 2008, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Defendants have filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds, with one exception, the findings and recommendations to be supported by the record and by proper analysis.

1 The court concludes that there are disputed issues of fact concerning defendant
2 Rios which preclude the granting of summary judgment on his behalf.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed February 28, 2008, are adopted in full
5 except as to defendant Rios; as to that defendant, summary judgment is denied;

6 2. Defendant Lemon's June 4, 2007, motion for summary judgment is denied;

7 3. Defendant Butler's May 30, 2007, motion for summary judgment is granted;

8 4. The other defendants' May 30, 2007, motion for summary judgment is granted
9 in part and denied in part as follows:

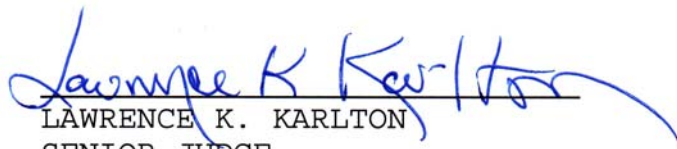
10 a. Denied with respect to the claims against Rendon, Baber and Acuna;

11 b. Denied with respect to the claim that Bunnell was deliberately indifferent by
12 failing to call down the yard sooner;

13 c. Granted with respect to the claim that Bunnell was deliberately indifferent by
14 changing the plan for ending the lockdown; and,

15 5. The matter is remanded to the magistrate judge for further proceedings,
16 including the scheduling of a pretrial conference, if appropriate.

17 DATED: March 26, 2008.

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20 LAWRENCE K. KARLTON
21 SENIOR JUDGE
22 UNITED STATES DISTRICT COURT
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